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IN THE

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1968

DARGAN SUTHER,

Petitioner,

versus

THE CITY OF MIDFIELD, INC., ET AL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FIFTH CIRCUIT COURT OF APPEALS

RESPONDENTS' BRIEF IN OPPOSITION

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

NO. 1436

DARGAN SUTHER,

Petitioner,

THE CITY OF MIDFIELD, INC., ET AL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FIFTH CIRCUIT COURT OF APPEALS

RESPONDENTS' BRIEF IN OPPOSITION

Certiorari should be denied in this cause for the following reasons:

I. THE PETITION FOR WRIT OF CERTIORARI, AS FILED IN THIS CAUSE, IS INSUFFICIENT.

The Rules of the Supreme Court of the United States, adopted June 12, 1967, effective October 2nd, 1967, Rule 23, specifically provides that the petition for writ of certiorari shall contain in the order there indicated the required matters. Section 4 of the same Rule provides that the failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying his petition. The purported petition for writ of certiorari as filed in this cause does not comply with this Rule.

II. REASONS FOR CERTIORARI NOT STATED.

As provided by Rule 19, Rules of the Supreme Court of the United States, a review on writ of certiorari is not a matter of right, but of sound judicial discretion and will be granted only where there are special and important reasons therefore. While the reasons set forth in Rule 19 neither control nor fully measure the Courts' discretion, the reasons set forth in Rule 19 indicate the character of reasons which will be considered. The petition as filed in this cause does not give any reason whatsoever as to why this Court should grant a writ of certiorari.

III. WRIT OF CERTIORARI NOT REQUESTED IN THIS CAUSE.

At no point in the purported petition for writ of certiorari is this Court requested to issue such a writ. It is merely stated as a conclusion on pages 12 and 13 of the petition that "The Court of Appeals should be reversed and this Court should declare the petitioner's rights under the ordinance as raised by this petition."

IV. FEDERAL JURISDICTIONAL PREREQUISITES HAVE NOT BEEN MET IN THE COURTS BELOW.

We think the effect of the holding of the Supreme Court in Hague v. Committee for Industrial Organization is that where the subject matter of a suit is tangible property, such suit cannot be maintained in the absence of the requisite averment or proof that the amount in controversy exceeds Ten Thousand Dollars. As we understand that case, federal courts simply lack jurisdiction in suit based on infringement of property rights

secured by the constitution and laws of the United States without averment or proof that the amount in controversy exceeds Ten Thousand Dollars. Furthermore, the respondent, City of Midfield, Alabama, a municipal corporation, is not a person within the meaning of 42 U.S.C.A. 1983. This code section does not confer federal jurisdiction over a municipality. The effect of the decisions of this court in Egan vs. Aurora and Monroe vs. Pape is that such a complaint against a municipality under 42 U.S.C.A., 1983, states no cause of action.

V. RESPONDENTS WERE ENTITLED TO SUMMARY JUDGMENT BELOW.

Assuming that the jurisdictional prerequisites have been met, the Petitioner's contentions in the courts below have no merit and the granting of Respondents' motion for summary judgment was correct. Respondents' exhibits to their motion for summary judgment below (Exhibits A through O, inclusive., R - 8 through 55) unequivocally deny petitioner's charges and petitioner's affidavits below being devoid of factual matter, under such circumstances summary judgment should be upheld. This principle was recognized by this Court in Morgan vs. Sulvester.

VI. ORDINANCE UNDER ATTACK VALID EXERCISE OF POLICE POWER.

Municipal ordinances as well as state statutes to prevent the growth and spread of weeds or other noxious plants have generally been held to be constitutional as a valid exercise of police power.

Code of Alabama 1940, Title 37, Sections 1, 492, and 501 (Recompiled 1958)

City of St. Louis vs. Galt, 179 Mo. 8, 77 S. W. 876

3 Corpus Juris Secondum, 421

2 American Jurisprudence 437, Agriculture, Section 41

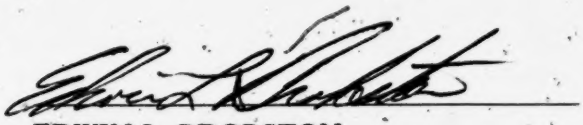
3 American Jurisprudence 2d., 808 Agriculture, Section 44, 45

12 American Law Reports 1143

VII. CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Edwin L. Brobston, the attorney for respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that a printed and signed copy of the foregoing Respondents' Brief in Opposition was this day served on the adverse party herein in accordance with Supreme Court Rules 21 (1) and 33, by depositing the same in a United States Post Office at Bessemer, Alabama, with first-class postage prepaid, addressed to Dargan Suther, Pro Se and Dewey Jones, Esq., petitioner's last known counsel of record at Post Office address furnished me by them as follows:

Dewey Jones
816 South 20th Street
Birmingham, Alabama

Dargan Suther
% Dewey Jones
816 South 20th Street
Birmingham, Alabama

This 24th day of May, 1968.

EDWIN L. BROBSTON